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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/797,956	03/11/2004	Larry E. Wittmeyer JR.	772204-0006-0002	4878
27910 7590 04/04/2008 STINSON MORRISON HECKER LLP ATTN: PATENT GROUP 1201 WALNUT STREET, SUITE 2800 KANSAS CITY, MO 64106-2150				
EXAMINER				
CHANG, VICTOR S				
ART UNIT		PAPER NUMBER		
1794				
MAIL DATE		DELIVERY MODE		
04/04/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/797,956

Applicant(s)

WITTMAYER, LARRY E.

Examiner

Victor S. Chang

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 March 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-70 is/are pending in the application.
- 4a) Of the above claim(s) 1-44 and 54-62 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 45-53 and 63-70 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SI-08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Introduction

1. Applicants' declaration and remarks filed on 3/24/2008 have been entered. Claims 45-53 and 63-70 are active.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Rejections Based on Prior Art

3. Claims 45-47, 68 and 70 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaye [US 5390819] for reasons of record in the Office Actions mailed 4/13/2006, 1/3/2007 and 9/19/2007.
4. Claims 48-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaye [US 5390819] in view of James [US 2415012] for reasons of record in the Office Actions mailed 4/13/2006, 1/3/2007 and 9/19/2007.
5. Claims 63-68 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaye [US 5390819] for reasons of record made in the Office Actions mailed 4/13/2006, 1/3/2007 and 9/19/2007.

Response to Arguments

6. Applicant argues at Remarks pages 2-3 that
"The Examiner maintains that it would have been obvious to use the structured stack of flexible sheets shown in the Kaye Patent as a recreational toy because the stack, when

expanded, will provide for recreation to a user. No evidence has been presented to show that repositionable notepads or other adhesive notepads were suggested or promoted for use as a recreational toy prior to the Applicant's invention. Submitted herewith is the Declaration of Larry E. Wittmeyer, Jr., the inventor of the subject invention. Mr. Wittmeyer has over forty years of experience in relation to paper and adhesive products. Mr. Wittmeyer confirms that, to his knowledge, other parties did not use or promote the use of repositionable notepads as a recreational toy. To the contrary, in the past, the focus of using repositionable notepads was on removing the individual sheets from the notepad for adhesion to other substrates. However, after products embodying the present invention were launched commercially in the marketplace, 3M, a leading manufacturer of repositionable notepads, and Slinky®, the owner of the brand name Slinky® for the conventional, metal/plastic toy, began promoting a Slinky® branded repositionable notepad product. Had this concept been obvious before the Applicant's invention, Slinky® and/or 3M, as well as other competitors, would have sold and promoted the use of repositionable notepads as a recreational toy. They did not do so until after the Applicant's invention and commercial introduction of the Applicant's invention to the public. It is submitted that the introduction of these products only after the Applicant's invention and commercial introduction of the same evidences copying that should be considered as relevant to the obviousness inquiry."

However, regarding applicant's contention that no evidence has been presented by the examiner to show that repositionable notepads or other adhesive notepads were suggested or promoted for use as a recreational toy, applicant is again directed to the Office action mailed 1/3/2007, page 3, lines 10-15 for examiner's position as to why it would have been obvious to one having ordinary skill in the art. Further, applicant has failed to show any evidence that the prior art is incapable to be useful as a toy. Regarding the 3M promotion, applicant's statement appears to be mere opinion rather than factual evidence. In particular, applicant fails to provide any dated evidentiary support that 3M promotion is necessarily instigated by applicant's product launch. Nor is there any factual support that the method of 3M product usage is necessarily later than applicant's conception of the method of use. The declaration is deficient.

Conclusion

7. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor S. Chang whose telephone number is 571-272-1474. The examiner can normally be reached on 7:00 am - 5:00 pm, Tuesday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Victor S Chang/
Primary Examiner, Art Unit 1794